

April 15, 2010

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in WC Docket No. 05-337

Dear Ms. Dortch:

On April 14, 2010, John Badal, Gil Arviso, and Jon Landstrom of Sacred Wind Communications, Inc. ("SWC") and myself, counsel to SWC, met with Jennifer McKee, Amy Bender, Gary D. Seigel, and Theodore H. Burmeister of the Telecommunications Access Policy Division of the Wireline Competition Bureau, to provide background and an update on the deployment activities of SWC, and to discuss the Petition of Smith Bagley, Inc. ("SBI") for a waiver of the *Interim Cap Order*, filed in the referenced docket. Also accompanying SWC at the meeting was Simon Boyce of the Navajo Nation Washington Office.

After describing SWC and its deployment activities, the SWC representatives discussed all the reasons that SBI had not made the case for waiver of the *Interim Cap Order*. We also urged that rather than waiving the *Interim Cap Order* and allowing SBI to take the same per-line level of high-cost support as SWC, the Bureau should require SBI to file cost data demonstrating that its costs meet the support threshold in the same manner as SWC, and take high-cost support on the basis of its own costs, as required by the Commission in the *Interim Cap Order*, and specifically affirmed by the D.C. Circuit.

Indeed, while SBI scoffs at that notion in its Reply to SWC's opposition to its waiver request, this is exactly what is required by the Commission. As noted by the D.C. Circuit in affirming the *Interim Cap Order* and rejecting the same arguments SBI makes here, "it is not unreasonable for the Commission to ask that providers be asked to calculate their own costs." *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1104 (D.C. Cir. 2009). Indeed, that is precisely what should be required of SBI here, and the Bureau should flatly reject SBI's argument that it would just be too "cumbersome," too "time-consuming," or too "costly" to do so. See SBI Reply at 12, & n.37.

SWC also provided the attached hand-outs to the Commission attendees at the meeting, which more fully describe the points SWC covered.

Ms. Marlene H. Dortch
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If you have any questions regarding this *ex parte* presentation, please do not hesitate to contact the undersigned.

Respectfully Submitted,

SACRED WIND COMMUNICATIONS, INC.

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Attachments

cc: Jennifer McKee, Amy Bender, Gary D. Seigel, Theodore H. Burmeister

SACRED WIND COMMUNICATIONS, INC.

***Ex Parte Meeting with Telecommunications Access Policy Division
April 14, 2010***

Background on Sacred Wind Communications, its Network and Deployment Status

- Overview of SWC 3.65 GHz Fixed Wireless Local Loop WiMAX platform and hybrid fiber/wireless backbone transmission network.
- SWC service territory covers 3200 square miles of 5200 square mile Eastern Agency. When fully deployed, by year end 2012, SWC network will serve 8,000 of the 8,400 Eastern Agency households in its service territory, ***or about 95% of Eastern Agency households in its service territory.***
- SWC has just completed its wireless transmission backbone, with construction of 15 backbone towers, and is commencing mass rollout of its WiMAX fixed wireless services. With the addition of 1,000 new households this year, SWC will have increased its penetration (including 2,500 existing subscribers) to approximately 40%, contrary to SBI assertions. With expected addition of 2000+ homes in each of 2011 and 2012, will be fully deployed by year end 2012.
- Remainder of Eastern Agency (approximately 3097 homes in remaining 2000 square miles or 25% of Eastern Agency homes) are in portions of service territories of Frontier Communications, CenturyTel, Western New Mexico Telephone Company, and Windstream Communications.

SBI has not Made the Case for Waiver of the Interim Cap Order

- SBI's rhetoric aside, penetration in SWC's Eastern Agency service area (70% of Eastern Agency and 73% of its population) is approaching 40% and will be 95% at end of 2012. Thus, fundamental premise underlying SBI's petition, comparing deployment and penetration in the Eastern Agency to low penetration of Navajo Reservation and other Covered Locations, is flawed.
- Notwithstanding SBI's protestations to the contrary, all of the concerns underlying the Commission's adoption of the Interim Cap Order would be applicable to waiving the rule, and providing SBI with support based on SWC's costs. For example:
 - The basis for the Covered Locations exception -- that given low penetration, wireless CETC would not be providing complimentary service in addition to incumbent -- not applicable here given operations of SWC.

- Moreover, while SBI points to a government study that shows that “more and more consumers are ‘cutting the cord’” substituting wireless for wireline (SBI Petition at 15, & n.40), that is directly contrary to SWC’s experience with the Navajo population, where working family members use mobile phones in their travels across miles of Navajo lands, but fixed connections, where available, are prized for their use by at-home elderly adults and children, who would otherwise be left without service. In addition, given local topography and proclivity of Navajo families to locate their homes in canyons where grasses are available for their livestock, mobile service is often unavailable except through climbing a hill (one of which, for example has been named “beish bi hane baghan” or “telephone booth”). *Unless SBI is willing to install towers in canyons and depressions far from paved roadways, its service, while complimentary to home-based services, is a poor replacement for a fixed solution and will not be purchased as such by Navajo subscribers.*
- SBI protests that it would not have incentive to focus expansion on lower-cost, higher density parts of the Eastern Agency, but rather would have the incentive to aggressively compete for SWC customers. Since, as it acknowledges, it receives support on a per-subscriber basis, its explicit incentive is to locate facilities where densities are the greatest, not in the interior regions of the Eastern Agency, just as it has historically built near highways and higher-density population centers.

Rather than Waiving the Interim Cap Order, and Allowing SBI to take the Same Per-Line Level of High-Cost Support as SWC, the Commission Should Require SBI to File Cost Data Demonstrating that Its Costs Meet the Support Threshold in the Same Manner as SWC, and Take High-Cost Support on the Basis of Its Own Costs

- SBI scoffs that SWC “goes so far to claim” that a waiver is not needed since the Interim Cap Order provides a mechanism for SBI to obtain support based on its own costs, asserting that any attempt to submit such cost data “would likely be a cumbersome, time-consuming, costly, and contentious process.” (SBI Reply at 12, & n.37).
- Of course, while SBI has not previously been required to submit its own cost data under the identical support rule, that it is precisely what is required by the Commission in the Interim Cap Order to obtain uncapped support. On appeal, the D.C. Circuit, in affirming the Interim Cap Order, rejected the same argument asserted by SBI here that there is no accounting mechanism in place for wireless carriers to calculate their costs, itself scolding carriers that “we think it not unreasonable for the Commission to ask that providers be asked to calculate their own costs.” *RCA*, 588 F.3d at 1104. Likewise, in its NPRM proposing elimination of the identical support rule, the Commission proposed and tentatively concluded that CETCs should submit their own costs as a prerequisite for obtaining high cost support, and laid out a series of proposed paths for determining and calculating costs for wireless CETCs.

- Here, rather than granting SBI's waiver, and allowing it to take advantage of the identical cost rule, the Bureau should order SBI, if it wishes uncapped support, to submit information on its own costs, notwithstanding SBI's complaints, rejected by the Commission and the D.C. Circuit, that it would just be too cumbersome and too contentious, and let the Commission determine a level of support that are tied to its costs.
- Contrary to SBI's suggestion that this would result in "a competitive windfall" to SWC (SBI Reply at 10), or would somehow not be competitive neutral (a notion explicitly rejected by the Interim Cap Order and the D.C. Circuit), basing SBI's high cost support on its own costs, rather than the costs of SWC, avoids the windfall to SBI of providing support that is in no manner tied to its costs, avoids all of the issues noted in the Interim Cap Order, and is completely fair, reasonable, and competitively sound.



FCC Updates 2010 Initiatives

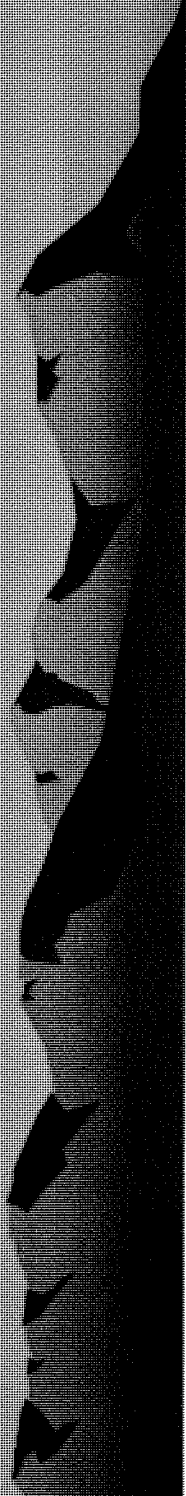
BY
Mr. John Badal – CEO



Sacred Wind Communications, Inc.

Message Points

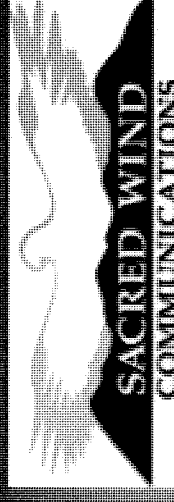
- FCC USF Reform must consider RLEC circumstances
 - RLEC investment in higher cost systems
 - Establish cost-based CETC support
- FCC broadband goals must consider tribal cultural & economic differences
 - Broadband that is culturally relevant
 - Training, PC costs as impediments more than monthly price
- FCC spectrum auctions must consider RLEC needs
 - Smaller footprints?
 - Scaled down purchase price to compete w/ Nationals
- Can FCC influence BIA right of way reform?
 - BIA rights of way processes do not work



Sacred Wind Differences

Solution Oriented

- Technology agnostic & terrain appropriate
- Perseverance (rights of way brickwalls)
- Local co. w/ local zeal



Sacred Wind Communications, Inc.

Sacred Wind Differences

Community Focused

- NM ISP Assn Innovation Excellence Award – 2007
- AMEX/NBC Shine A Light Award - 2009
- Innovative use of technology
- Surviving the changing economy
- Special community focus
- Next step -> Broadband - Culturally significant

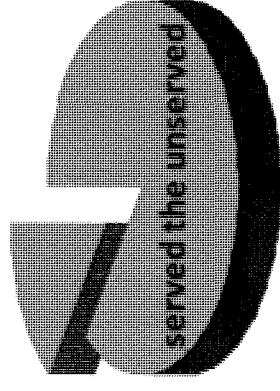


Sacred Wind Communications, Inc.



2010 Customer Objectives

- Major expansion starting in 2010
- Broadband path to every home
- Market culturally relevant broadband
- Expand wherever we have line of sight



Sacred Wind Communications, Inc.

Upgraded Copper Network

Legacy copper meetpoint *BEFORE*



Sacred Wind Communications, Inc.

Upgraded Copper Network SWC Broadband Distribution *AFTER*



Sacred Wind Communications, Inc.

SWC Towers

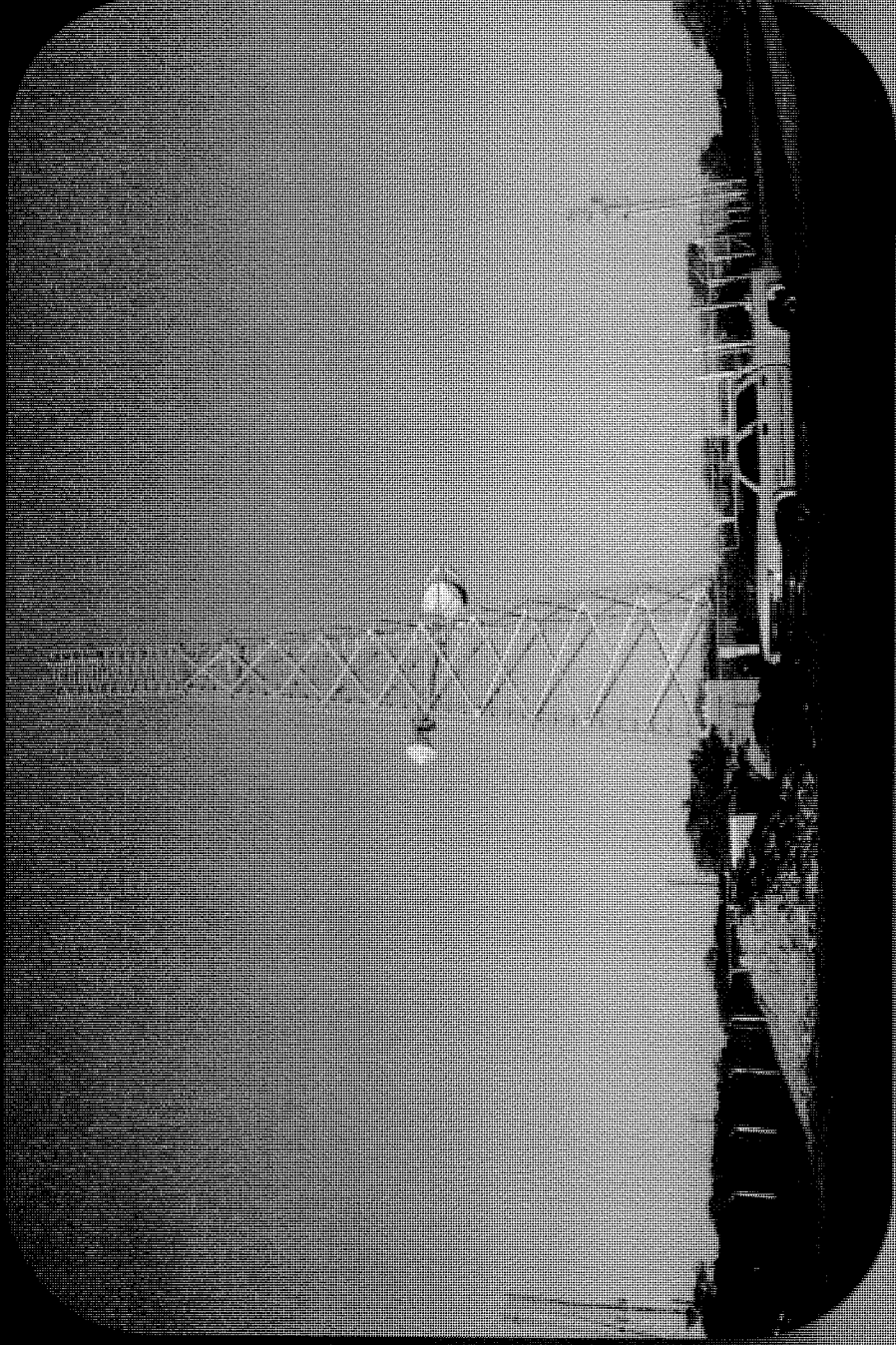
Huerfano Mesa (*Dzit Na O Dithii*)



Sacred Wind Communications, Inc.

SWC Towers

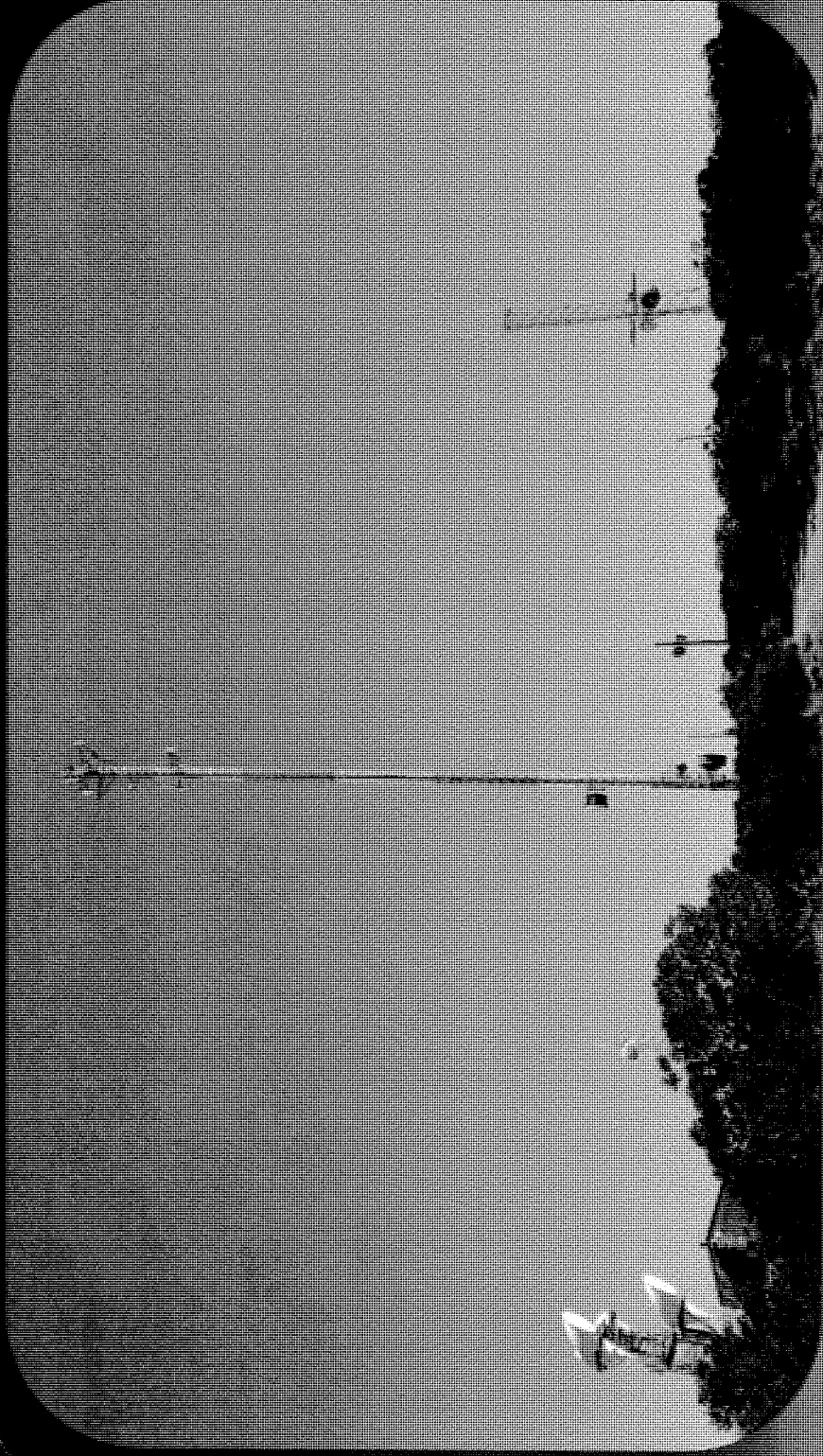
Harris Peak (Blanco area)



Sacred Wind Communications, Inc.

SWC Towers

Escrito Mesa (Lybrook area)



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Fixed Wireless

Broadband to the Hogan



Sacred Wind Communications, Inc.

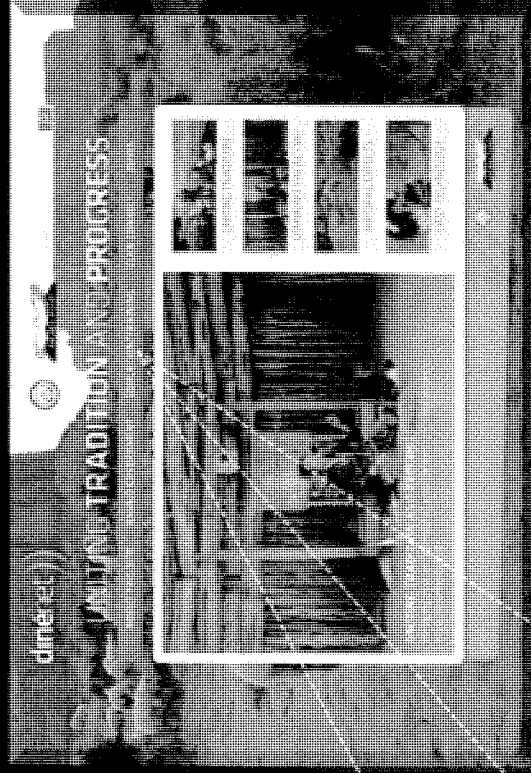
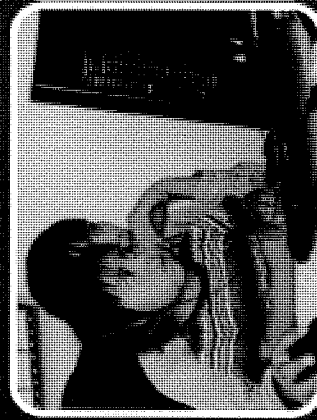
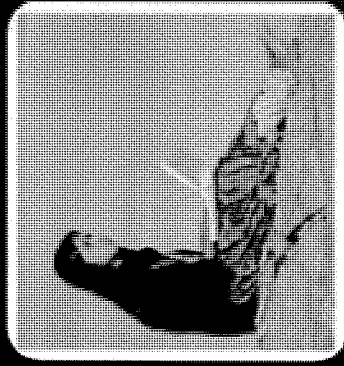
Fixed Wireless

Installing quick FWLL

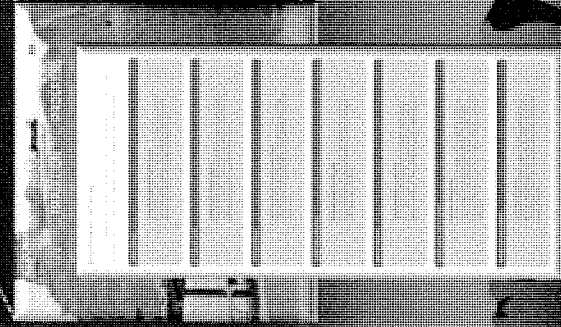


Sacred Wind Communications, Inc.

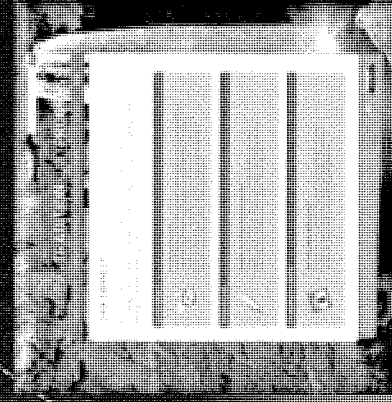
Making Broadband Culturally Relevant



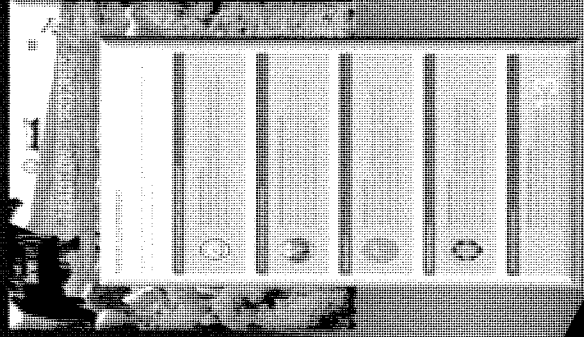
Online Language



Clan Connect



Gov't Services



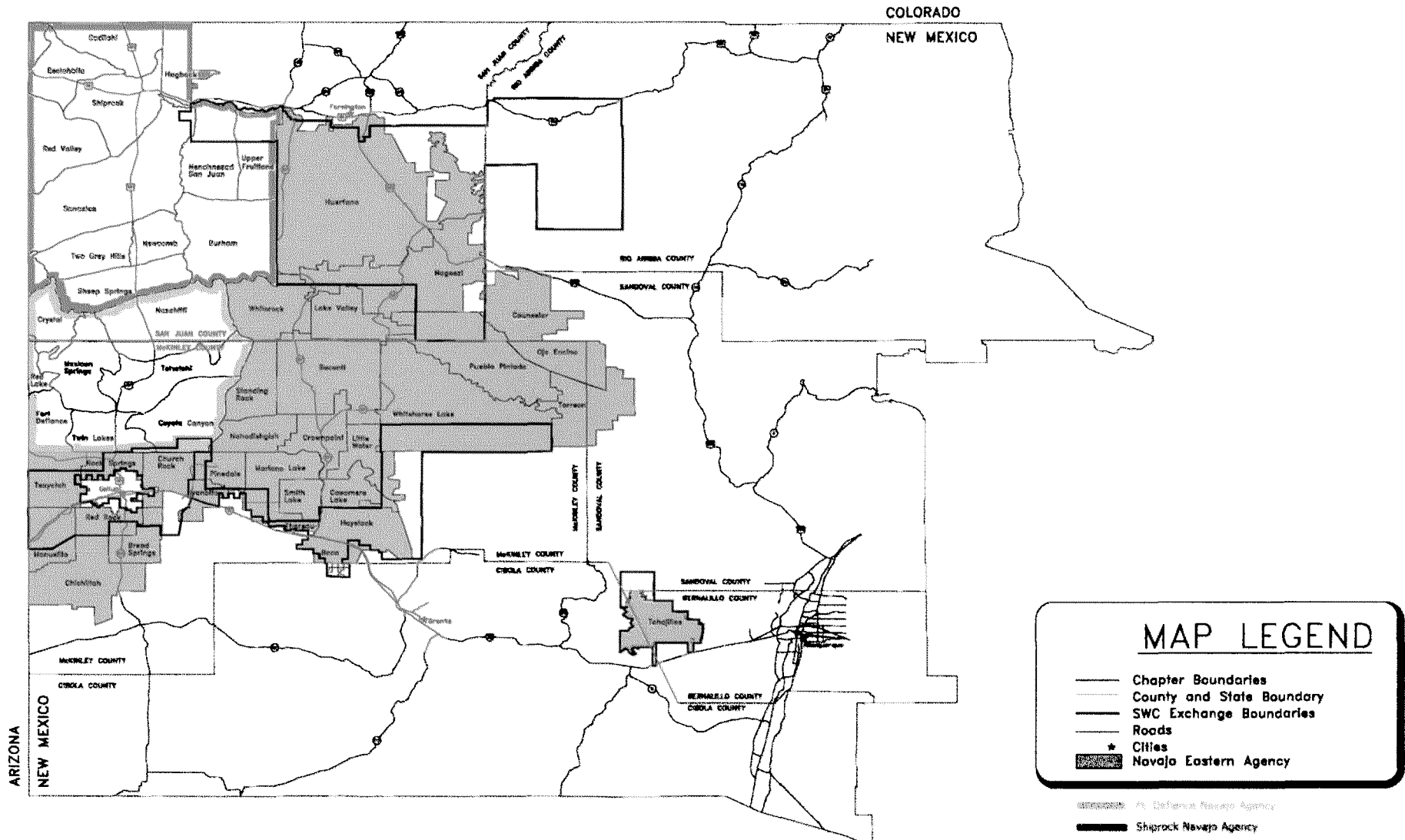
Sacred Wind Communications, Inc.

Our Community Involvement



Sacred Wind Communications, Inc.

Sacred Wind Communications Exchange Map



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